

SENATE BILL 3130

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50, relative to prohibiting discrimination in employment on the basis of an individual's status or history of unemployment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding Sections 2-6 as a new part to be appropriately designated.

SECTION 2. This part may be cited as the "Fair Employment Opportunity Act of 2012".

SECTION 3.

(a) The general assembly finds that denial of employment opportunities to individuals because they are or have been unemployed is discriminatory and burdens commerce by:

(1) Reducing personal consumption and undermining economic stability and growth;

(2) Squandering human capital essential to this state's economic vibrancy and growth;

(3) Increasing demands for state and federal unemployment insurance benefits, reducing trust fund assets, and leading to higher payroll taxes for employers, cuts in benefits for jobless workers, or both;

(4) Imposing additional burdens on publicly funded health and welfare programs; and

(5) Depressing income, property, and other tax revenues that states, localities and the state government rely on to support operations and institutions essential to commerce.

(b) The purpose of this part is to prohibit consideration of an individual's status as unemployed in screening for or filling positions except where a requirement related to employment status is a bona fide occupational qualification reasonably necessary to successful performance in the job and to eliminate the burdens imposed on commerce by excluding such individuals from employment.

SECTION 4. As used in this part:

(1) "Affected individual" means any person who was refused consideration for employment or was not hired by an employer because of the person's current employment status, or any person who was not considered, screened, or referred for employment opportunities by an employment agency because of the person's current employment status;

(2) "Commissioner" means the commissioner of labor and workforce development;

(3) "Employer" means any person engaged in commerce or any industry or activity affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and includes:

(A) Any person who acts, directly or indirectly, in the interest of an employer with respect to employing individuals to work for the employer; and

(B) Any successor in interest of an employer;

(4) "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for individuals opportunities to work for an employer and includes an agent of such a

person and includes any person who maintains an internet web site that publishes advertisements or announcements of job openings; and

(5) "Status as unemployed" means an individual's present or past unemployment regardless of the length of time such individual was unemployed.

#### SECTION 5.

(a) It shall be an unlawful practice for an employer to:

(1) Refuse to consider for employment or refuse to offer employment to an individual because of the individual's status as unemployed;

(2) Publish in print, on the Internet, or in any other medium, an advertisement or announcement for any job that includes:

(A) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for a job; or

(B) Any provision stating or indicating that an employer will not consider an applicant for employment based on that individual's status as unemployed; or

(3) Direct or request that an employment agency take an individual's status as unemployed into account in screening or referring applicants for employment.

(b) It shall be an unlawful practice for an employment agency to:

(1) Refuse to consider or refer an individual for employment based on the individual's status as unemployed;

(2) Limit, segregate, or classify individuals in any manner that may limit their access to information about jobs or referral for consideration of jobs because of their status as unemployed; or

(3) Publish in print, on the Internet, or in any other medium, an advertisement or announcement for any job vacancy that includes:

(A) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for a job; or

(B) Any provision stating or indicating that an employer will not consider individuals for employment based on that individual's status as unemployed.

(c) It shall be unlawful for any employer or employment agency to:

(1) Interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this part; or

(2) Refuse to hire, to discharge, or in any other manner to discriminate against any individual because such individual:

(A) Opposed any practice made unlawful by this part;

(B) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this part;

(C) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this part; or

(D) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this part.

(d) Notwithstanding any other provision of this part, consideration by an employer or employment agency of an individual's status as unemployed shall not be an unlawful employment practice where an individual's employment in a similar or related job for a period of time reasonably proximate to the hiring of such individual is a bona fide

occupational qualification reasonably necessary to successful performance of the job that is being filled.

#### SECTION 6.

(a)

(1) Any employer or employment agency that violates Section 5(a) or (b) shall be liable to any affected individual:

(A) For actual damages equal to:

(i) The amount of:

(a) Any wages, salary, employment benefits, or other compensation denied or lost to such individual by reason of the violation; or

(b) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, any actual monetary losses sustained by the individual as a direct result of the violation or a civil penalty of one thousand dollars (\$1,000) per violation per day, whichever is greater;

(ii) The interest on the amount described in subdivision (a)(1)(A)(i) calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount described in subdivision (a)(1)(A)(i) and the interest described in subdivision (a)(1)(A)(ii), except that if an employer or employment agency that has violated Section 5 proves to the satisfaction of the court that the act or omission that violated Section 5 was in good faith and that the employer had

reasonable grounds for believing that the act or omission was not a violation of Section 5, such court may, in its discretion, reduce the amount of the liability to the amount and interest determined under subdivisions (a)(1)(A)(i) and (ii), respectively; and

(B) For such equitable relief as may be appropriate, including employment and compensatory and punitive damages.

(2) An action to recover the damages or equitable relief prescribed in subdivision (a)(1) may be maintained against any employer or employment agency in any court of competent jurisdiction by any one (1) or more persons for and in behalf of:

(A) The affected individual; or

(B) The affected individual and other individuals similarly situated.

(3) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) The right provided by subdivision (a)(2) to bring an action by or on behalf of any affected individual shall terminate:

(A) On the filing of a complaint by the commissioner in an action under subsection (d) in which restraint is sought of any violation of Section 5; or

(B) On the filing of a complaint by the commissioner in an action under subsection (b) in which a recovery is sought of the damages described in subdivision (a) owing to an affected individual by an employer or employment agency liable under subdivision (a)(1), unless

the action described in subdivision (a)(1)(A) or (B) is dismissed without prejudice on motion of the commissioner.

(b)

(1) The commissioner shall receive, investigate, and attempt to resolve complaints of violations of Section 5 in the same manner that the commissioner receives, investigates, and attempts to resolve complaints of violations of this title.

(2) The commissioner may bring an action in any court of competent jurisdiction:

(A) To enjoin violations of this title and seek other relief going forward necessary to prevent future violations;

(B) To recover:

(i) The damages described in subdivision (a)(1)(A);

(ii) In the case of a violation of Section 5(c), a civil penalty of not less than two hundred fifty dollars (\$250) per violation; or

(iii) Such other equitable relief the court deems appropriate.

(3) Any sums recovered by the commissioner pursuant to subdivision (b)(2)(A) shall be held in a special deposit account and shall be paid, on order of the commissioner, directly to each affected individual. Any such sums recovered pursuant to subdivision (b)(2)(A) that are not paid to an affected individual because of inability to do so within a period of three (3) years and any sums recovered pursuant to subdivision (b)(2)(B) shall be deposited into the treasury of this state as miscellaneous receipts.

(c)

(1) Except as provided in subdivision (c)(2), an action under subsection (a) may be brought not later than two (2) years after the date of the last event constituting the alleged violation for which the action is brought; provided, that the limitations for filing an action shall be tolled during the period that the commissioner is considering a complaint against any defendant named in a complaint filed with the commissioner under subdivision (b)(1).

(2) In the case of such action brought for a willful violation of Section 5, such action may be brought within three (3) years of the date of the last event constituting the alleged violation for which such action is brought; provided, that the limitations for filing an action by an individual shall be tolled during the period that the commissioner is considering a complaint pursuant to subdivision (b)(1).

(3) In determining when an action is commenced by the commissioner under this section for the purposes of this subsection (c), it shall be considered to be commenced on the date when the commissioner files a complaint in a court of competent jurisdiction.

(d) A court of competent jurisdiction, for cause shown, in an action brought by the commissioner is authorized to:

(1) Restrain violations of Section 5; and

(2) Award such other equitable relief as may be appropriate, including employment and monetary damages.

(e) The attorney general and reporter may appear for and represent the commissioner on any litigation brought under this section.

SECTION 7. This act shall take effect July 1, 2012, the public welfare requiring it.